

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$69,398.06 for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation for the period January 1, 2012 through July 18, 2020, without appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On July 20, 1999 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury when she assisted lifting a patient into a bed while in the performance of duty.³ OWCP accepted the claim for neck sprain, left shoulder strain, left shoulder impingement syndrome with June 5, 2002 arthroscopic acromioplasty, left-sided de Quervain's disease with release, and displacement of cervical intervertebral disc without myelopathy. Appellant remained off work following the June 5, 2002 acromioplasty. OWCP paid her compensation benefits on the periodic rolls effective June 16, 2002. A memorandum dated June 11, 2002 indicated that appellant's coverage was under the Federal Employees Retirement System (FERS).

On August 4, 2020 OWCP received a completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from January 2012 through December 2019. Beginning January 1, 2012, the SSA rate with FERS was \$1,564.50 and without FERS was \$924.30. Beginning December 1, 2012, the SSA rate with FERS was \$1,591.00 and without FERS was \$940.00. Beginning December 1, 2013, the SSA rate with FERS was \$1,614.80 and without FERS was \$954.10. Beginning December 1, 2014, the SSA rate with FERS was \$1,642.20 and without FERS was \$970.30. Beginning December 1, 2015, the SSA rate with FERS was \$1,642.20 and without FERS was \$970.30. Beginning December 1, 2016, the SSA rate with FERS was \$1,647.10 and without FERS was \$973.20. Beginning December 1, 2017, the SSA rate with FERS was \$1,680.00 and without FERS was \$992.60. Beginning December 1, 2018, the SSA rate with FERS was \$1,727.00 and without FERS was \$1,020.30. Beginning December 1, 2019, the SSA rate with FERS was \$1,754.60 and without FERS was \$1,036.60.

In a FERS offset calculation form dated August 12, 2020, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods and calculated a total overpayment in the amount of \$69,398.06. It found that, during the period January 1 through November 30, 2012, an overpayment had been created in the amount of \$7,070.34; for the period December 1, 2012 through November 30, 2013, an overpayment had been created in the amount of \$7,833.46; for the period December 1, 2013 through November 30, 2014, an overpayment had been created in the amount of \$7,950.18; for the period December 1, 2014 through November 30, 2015, an overpayment had been created in the amount of \$8,084.95; for the period December 1, 2015 through November 30, 2016, an overpayment had been created in the amount of \$8,107.10; for the period December 1, 2016 through November 30, 2017, an overpayment had been created

³ A copy of the Form CA-1 is not of record.

in the amount of \$8,109.02; for the period December 1, 2017 through November 30, 2018, an overpayment had been created in the amount of \$8,271.46; for the period December 1, 2018 through November 30, 2019, an overpayment had been created in the amount of \$8,503.70; and for the period December 1, 2019 through July 18, 2020, an overpayment had been created in the amount of \$5,467.85. OWCP calculated a total overpayment in the amount of \$69,398.06.

By letter dated August 13, 2020, OWCP informed appellant that she had been in receipt of FERS/SSA dual benefits. It explained that the portion of the SSA benefits earned as a federal employee was part of the FERS retirement package, the receipt of FECA benefits and Federal Government retirement benefits concurrently was a prohibited benefit, and that her FECA benefits must be adjusted based on the FERS portion of SSA benefits attributable to federal service. OWCP noted appellant's new FECA benefit amount every four weeks after SSA offset would be \$1,917.63.

On August 14, 2020 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$69,398.06 for the period January 1, 2012 through July 18, 2020 because the SSA/FERS offset was not applied to payments for this period. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she could request waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It provided her with an overpayment action request form and further notified her that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On September 3, 2020 appellant's counsel requested a prerecoupment telephonic hearing regarding possible waiver of overpayment and interest as appellant's expenses were higher than her income. A telephonic hearing was held on December 17, 2020. OWCP's hearing representative advised appellant to complete the Form OWCP-20 and to provide supporting documentation of income and expenses. She held the record open for 30 days to allow for the submission of such.

Subsequent to the hearing, OWCP received letters from appellant's counsel dated December 15, 2020 and January 28, 2021. Counsel indicated that appellant was 73 years old and ill. He also advised that SSA documents indicated that her SSA survivor's income began January 2013 in the monthly amount of \$495.90 from her deceased husband. Counsel enclosed a December 2012 letter from SSA which informed appellant that she was eligible for a widow's benefit beginning January 2013 in the amount of \$495.00 monthly, and that she would receive this benefit in one check, with her own benefit, under her own claim number.

By decision dated March 3, 2021, an OWCP hearing representative finalized the preliminary overpayment determination that an overpayment of compensation in the amount of \$69,398.06 had been created for the period January 1, 2012 through July 18, 2020 for which appellant was not at fault, as she received FECA wage-loss compensation benefits without

appropriate offset for SSA age-related retirement benefits attributable to FERS. The hearing representative denied waiver of recovery of the overpayment because she had not submitted a completed Form OWCP-20 or provided supporting documentation to support her income and expenses. OWCP's hearing representative required recovery of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of FECA's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁶ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without appropriate offset.

The evidence of record establishes that, while appellant was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both wage-loss compensation under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁸ Thus, the Board finds that fact of overpayment has been established.

The Board further finds, however, that this case is not in posture for decision with regard to the period and amount of the overpayment.

To determine the period and amount of the overpayment, the portion of appellant's SSA age-related retirement benefits that were attributable to federal service must be calculated. As

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see R.V.*, Docket No. 20-1331 (issued March 24, 2021); *S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁸ *Id.* *See also T.S.*, Docket No. 21-0028 (issued September 3, 2021); *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

noted above, SSA provided appellant's age-related retirement benefit rates with and without FERS for the period January 1, 2012 through July 18, 2020. The Board notes, however, that the record contains a December 2012 letter from SSA, which informed appellant that she was eligible for a widow's benefit beginning January 2013 in the amount of \$495.00 monthly, and that she would receive this benefit in one check, with her own benefit, under her own claim number.

Based upon this conflicting evidence, the case must be remanded for OWCP to request clarification from SSA regarding the amount of age-related retirement benefits appellant received based on her federal service.⁹ Following receipt of that information it will then determine the period and amount of the overpayment and issue a new preliminary overpayment determination with a new overpayment action request form, a new Form OWCP-20, and instructions for her to provide supporting financial documentation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that appellant received an overpayment of compensation for which she was without fault because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset. The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment.

⁹ *Order Remanding Case, M.E.*, Docket No. 19-0856 (issued December 31, 2019).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 26, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board